

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

IN RE: . Case No. 23-13359-VFP  
.  
BED BATH & BEYOND, INC., . M.L.K. Federal Building  
et al., . 50 Walnut Street, 3rd Floor  
Debtors. . Newark, NJ 07102  
.  
April 11, 2024  
..... 11:03 a.m.

TRANSCRIPT OF MOTION ON SHORTENED TIME TO APPROVE A PARTIAL  
SETTLEMENT OF CLAIMS  
BEFORE HONORABLE VINCENT F. PAPALIA  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Plan Administrator: Pachulski Stang Ziehl & Jones, LLP  
By: MICHAEL GOLDBERG, ESQ.  
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TELEPHONIC APPEARANCES:

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- - -

1 THE COURT: Okay. Good morning. This is the United  
2 States Bankruptcy Court for the District of New Jersey. We're  
3 here on various matters today but on right now is a motion on  
4 shortened time in the case of Bed Bath & Beyond, 23-13359, to  
5 approve a settlement or at least a partial settlement of claims  
6 filed by Safety National Casualty Corporation.

7 May I have appearances, please?

8 MR. GOLDBERG: Good morning, Your Honor. On behalf  
9 of the plan administrator, Michael Goldberg, Brad Sandler and  
10 my partner, Paul Labov, of Pachulski, Stang, Ziehl and Jones.

11 THE COURT: Okay, good morning.

12 And on the phone?

13 MR. CORBI: Good morning, Your Honor. Richard Corbi,  
14 Law Offices of Richard J. Corbi, PLLC, counsel for Taussig Risk  
15 Advisors. And my pro hac application was filed this morning.  
16 My local counsel will not be appearing because we want to keep  
17 the cost down for the client.

18 THE COURT: And who's your client? I'm sorry.

19 MR. CORBI: Taussig Risk Capital Advisors.

20 THE COURT: Oh, okay.

21 All right, any other appearances?

22 (No audible response)

23 THE COURT: Having heard no respo

24 say that I entered an order shortening time about eight days  
25 ago setting the hearing on this matter for today, and there was

1 service required as set forth in the order and the order also  
2 provided that objections could be filed one day prior to the  
3 hearing or presented orally at the hearing. So, why don't you  
4 go ahead and start? And I know that one of the motions is to  
5 seal so if we come across an issue that relates to that, then  
6 we'll address that.

7 MR. SANDLER: Sounds good, Your Honor. And I was  
8 remiss. I --

9 (Telephonic disturbance)

10 THE COURT: Hello? Who was that?

11 (No audible response)

12 MR. SANDLER: I was remiss, Your Honor. My  
13 colleague, Victoria Newmark, is on the line, also Pachulski,  
14 Stang, Ziehl & Jones. So, I wanted to make sure that the  
15 record is clear about that.

16 First of all, Your Honor, yes, thank you very much  
17 for hearing us on shortened notice both to you and to your  
18 staff. We know that we filed this motion on shortened notice  
19 and the reason for that, as we stated, is because we have a  
20 letter of credit that Safety National will draw down on in a  
21 couple of days at this point, April 15th.

22 So, we have a settlement where their collateral is  
23 going to be -- a large amount of their collateral is going to  
24 be released to the estate and we wanted to make sure that we  
25 got an order which really is a comfort order, but we wanted to

1 make sure we got an order entered so that these funds would be  
2 available to the estate. So, we appreciate that.

3 In terms of the motion to seal, Your Honor, I think  
4 what I'd like to do is really take that first just because  
5 there is sensitive information, there was commercial  
6 information in these documents that could be sensitive to  
7 competitors and others, we thought it was important to file the  
8 motion under seal. There has been no objection to that motion  
9 so we would ask that you enter the order granting the motion to  
10 file under seal.

11 THE COURT: All right, does anyone wish to be heard  
12 on that?

13 (No audible response)

14 THE COURT: All right, so there is this motion to  
15 seal and as Mr. Sandler stated, there's Section 107 of the  
16 Bankruptcy Code that requires the Court to seal information  
17 that is in the nature of confidential research, development or  
18 commercial information and that is a shall, not a may and  
19 that's in Video Software Dealers Association v. Orion Pictures,  
20 21 F.3d 24, 27 (2d Cir. 1994).

21 And the Courts in this circuit have noted that 107(b)  
22 is meant to shield entities from disclosure of commercial  
23 information that is disclosed would result in unfair advantage  
24 to competitors and cause commercial injury and that is a  
25 flexible standard and it varies according to the nature of the

1 transaction or settlement and the specific extent and interest  
2 or involvement, an impact on the settlement on the bankruptcy  
3 case.

4 And I will say that I myself reviewed the redacted  
5 version versus the unredacted version and I saw two things.  
6 One is that the redactions are limited. They're not extensive  
7 in terms of I would say maybe, you know, in percentages maybe  
8 less than ten percent of the document is redacted. But more  
9 substantively, the information that I saw in there, I  
10 understand where -- although I don't understand all the  
11 details, I understand where that would be considered  
12 confidential and commercial business information that should  
13 not be disclosed. And there were no objections filed and  
14 service was made, so I'll grant the sealing motion.

15 On the order, Mr. Sandler, and this came up in this  
16 case before with the lease that ultimately went to Hobby Lobby  
17 and the sealing, there was a lot of sealing there, and the  
18 order just needs to say -- and I know that we have a form order  
19 but it just needs to say that the redacted version, you know,  
20 will be public and that the unredacted version won't be.

21 MR. SANDLER: So, we'll revise the form of order.

22 THE COURT: Yes, just use that form.

23 MR. SANDLER: Okay.

24 THE COURT: And that'll take care of it. So that  
25 part of the motion is granted.

1                   So, do you want to give a little bit of background?

2 Because it's a significant settlement it looks like to me.

3                   MR. SANDLER: It is significant. It's meaningful to  
4 the estate. And as I mentioned when I was here on Tuesday, the  
5 estates have somewhere in the neighborhood of about close to  
6 20,000 -- over 19,000 claims that have been filed in the  
7 estate. The estate has limited resources, as I mentioned,  
8 roughly about 7.2 million, somewhere in that range, million  
9 dollars. There have been billions of dollars asserted in  
10 claims.

11                  And, importantly, the secured lender, Sixth Street,  
12 has a lien on substantially all of the assets, even assets that  
13 you may recall, Your Honor, Sixth Street had a rollup of the  
14 DIP loan. There was a five for one rollup and that encumbered  
15 \$240 million of unencumbered assets. So, virtually, everything  
16 in the estate, whether it's, you know, avoidance actions,  
17 whether it's, you know, the proceeds from the settlement,  
18 virtually everything is liened up. And Sixth Street is still  
19 owed about \$380 million. So, they are far --

20                  THE COURT: Still owe \$380 million?

21                  MR. SANDLER: \$380 million.

22                  THE COURT: So, they were paid less than 300?

23                  MR. SANDLER: Yeah, thereabouts, I guess, yeah, in  
24 that range.

25                  And, in any event, so, you know, as we're moving

1 forward in the case, we're obviously trying to monetize as many  
2 assets as we possibly can. And the Safety National policies  
3 really focus on I'll say three really key areas, auto, general  
4 liability and worker's comp.

5 And as is traditional with a lot of insurance  
6 companies, they maintain either letters of credit or other  
7 forms of collateral. And here they really have I'll say two  
8 buckets of collateral. They have an LC that's \$44 million,  
9 that's what they're going to draw down on on April 15th absent  
10 this agreement being approved and then they have another fund  
11 of \$15 million. So, basically, you know, for horseshoes, about  
12 \$59 million of collateral.

13 THE COURT: It's a fund as opposed to property or --

14 MR. SANDLER: It's a fund, yeah. And the purpose of  
15 that money is, you know, these are loss sensitive policies and  
16 so that means, you know, in addition to like premiums, there  
17 are self-funded retentions, there are a variety of other  
18 deductibles and chargebacks that get hit against those  
19 policies. And so as is, typical, you don't know when these  
20 policies are going to be tapped, right, because worker's comp,  
21 for example, there's no statute of limitations so I could  
22 assert a claim two years down the road and it could hit these  
23 policies. So, the estate wouldn't get all the money back  
24 assuming there are no claims until many, many, many years down  
25 the road.

1                   And Safety National filed two proofs of claim in the  
2 case both unliquidated because they don't know what their  
3 exposure is and so the plan administrator worked with Safety  
4 National to come up with a resolution where they would release  
5 some of their collateral to the estates and that's essentially  
6 what this motion is.

7                   It is an agreement whereby the insurer, Safety  
8 National, will release roughly \$39 million of the collateral to  
9 the estate so this is coming early, right, instead of waiting  
10 years down the road, and then there are still continuing  
11 obligations that the parties will have under certain policies.  
12 These aren't all the policies that Safety National has. This  
13 is just a subset of policies and that's the reason why we call  
14 them the subject policies.

15                   In any event, this is a tremendous resolution for the  
16 estate. It's a great settlement for the estate as you can  
17 imagine. And the plan administrator which is, obviously, the  
18 estate now is governed by the plan, not by Section 363, an  
19 objection that was filed about an hour ago, maybe less than  
20 that, alluded to.

21                   THE COURT: Oh, I didn't see that objection.

22                   MR. SANDLER: Yeah, there was an objection that was  
23 filed I think somewhere after ten o'clock this morning. I can  
24 give you the docket Number, Your Honor.

25                   THE COURT: One second.

1                   MR. SANDLER: I just have to pull my computer up. It  
2 is Docket Number 2958.

3                   THE COURT: 2958.

4                   MR. SANDLER: And I must say, Your Honor, I haven't  
5 read the entirety of the objection but the objection seems to  
6 miss the mark in describing the release of collateral as being  
7 a sale, also suggesting that somehow the plan administrator is  
8 subject to 363 of the Bankruptcy Code even though we're post  
9 confirmation and the plan governs the disposition of assets of  
10 the estate.

11                  THE COURT: Okay, I did not see this.

12                  MR. SANDLER: Your Honor, you want to take a few  
13 minutes and then -- so you have a chance to read the objection?

14                  MR. CORBI: Your Honor, it's Richard Corbi for  
15 Taussig Advisors. I filed the objection about an hour ago.

16                  THE COURT: Okay.

17                  MR. SANDLER: In any event, Your Honor, so it is  
18 clear that the settlement is in the best interest of the  
19 estate. It is clear that if the settlement is not approved,  
20 that the insurer, Safety National, will draw down on the LC,  
21 the \$44 million LC. It is clear as a matter of law that the  
22 plan administrator is governed by the confirmation order and  
23 the plan, not by Section 363. It is clear that this is not a  
24 sale, this is a release of collateral.

25                  And for all those reasons, Your Honor, we would ask

1 that the Court grant the motion.

2 THE COURT: All right, let me just read this  
3 objection.

4 MR. SANDLER: Sure.

5 (Pause)

6 THE COURT: Well, I've read the objection and I mean  
7 it seems to be based on essentially that this is a disguised  
8 sale and that it should be conducted pursuant to 363 and you've  
9 said, you know, the plan was confirmed and the plan allows for  
10 the sale of assets without Court approval or allows for the  
11 settlement really in many instances without Court approval, but  
12 I'm not sure about this one. I think this one -- is this one  
13 above the limit for --

14 MR. SANDLER: It is above the threshold but only --  
15 the threshold -- what happens under the plan, Your Honor,  
16 there's a threshold. Beneath the threshold the plan  
17 administrator has absolute discretion. Above the threshold the  
18 plan administrator needs oversight committee approval which he  
19 has and then still no Court approval is required, no notice, in  
20 fact. But because of the size of this in an abundance of  
21 caution, we thought it made sense to get a comfort order  
22 basically to authorize this. Even though it's not required, we  
23 went the extra step and we decided it made sense to get that.

24 THE COURT: Okay, Mr. -- and then the other part of  
25 it is that they submitted a higher bid, it sounds like by a

1 million dollars. They valued it a million dollars higher?

2 MR. SANDLER: Yeah. And the IOI -- Your Honor, by  
3 the way, Sixth Street is aware of the IOI and as I said, Sixth  
4 Street has a lien on substantially all the assets and Sixth  
5 Street is aware of the IOI and Sixth Street also rejected it.  
6 So, this money that is being released is Sixth Street's money  
7 at the end of the day and Sixth Street is the one who said this  
8 is a no go. There was too much risk.

9 Beyond that, Safety National has also said, because  
10 they still have some reinsurance issues -- remember, this  
11 doesn't resolve all the issues between Safety National and the  
12 estates. They've said we don't want to deal with any other  
13 party. We are only willing to deal with the estates. So, we  
14 have Safety National, the estates, the plan administrator, the  
15 oversight committee, all folks who have looked at this and all  
16 folks who have said this makes the most sense for the estates.

17 THE COURT: Okay, Mr. Corbi, do you want to respond?

18 MR. CORBI: Yes. It's Mr. Corbi, Your Honor, Richard  
19 Corbi -- it looks like I just cut out -- Mr. Corbi for Taussig  
20 Risk Capital Advisors, Your Honor. Again, thank you for  
21 letting me be heard on shortened notice, and taking time to  
22 review my objection.

23 This was, basically, an informal auction and sale  
24 process that the plan administrator conducted. The -- outside  
25 the plan administrator's April 15th deadline. We submitted our

1 letter of intent December, or updated letter of intent on  
2 December 11, 2023, exactly four months ago, and did not hear  
3 anything from the plan administrator or the debtors despite our  
4 reaching out. And what our bid does, it assumes all the  
5 liabilities away from the estate and imposes them on my client,  
6 my client would administer the asset or the worker's comp  
7 claims administration and provide an immediate cash infusion to  
8 the estate.

9 Now, as you'll see, our IOI attached to Mr. Hill's  
10 declaration who could be available by phone to dial in, but  
11 because of the federal judicial rules obviously it's not going  
12 to conference and then talk to a live court call. He can be  
13 here to testify as to what we -- go through all the numbers as  
14 to why our offer is better and the fact that the debtor's  
15 advisors, CAC, ran an auction process but we never heard from  
16 them despite reaching out to them.

17 And all we're asking for here is an auction process  
18 in full transparency. Even though the plan administrator  
19 couched this as a release of collateral and they want a comfort  
20 order and all this sort of protective stuff, they're conducting  
21 an auction. And, similarly, a release of collateral, it's an  
22 estate asset, it's a compromise, but also, it could be the sale  
23 of an asset. And we've offered a higher and better bid. We'd  
24 like the opportunity for some plan administrator to discuss  
25 with us and go through our numbers, if there are issues that we

1 can resolve or now -- or, you know, make the other parties  
2 comfortable.

3                   But from my client's view, we signed multiple NDAs,  
4 we have been involved in this process since a week after the  
5 petition date which is the one-year anniversary that's coming  
6 up at the end of this month or early May. And what we're  
7 asking for is to convert this settlement motion into an auction  
8 process. And it's -- the plan administrator on safety win the  
9 auction, so be it. That's what happened in Marillac and  
10 Verity, which is attached as Exhibit I to my declaration at  
11 2958, where there, the Court denied a private -- it's like a  
12 private sale motion, similar to what is being done here which  
13 was done post confirmation by a liquidating trustee and  
14 conducted an auction, and although my client lost, we actually  
15 increased the value to the estate by \$1.6 million. That's what  
16 we're asking for. That's all we're asking for here, Your  
17 Honor, and if we lose at the auction, we lose at the auction  
18 but it's a fair process. And I'm happy to answer any other  
19 questions you may have.

20                   THE COURT: So, the one question I was going to have  
21 was whether the cases you cite are post-confirmation cases  
22 where the plan allows the settlement, without Court approval,  
23 and I'm not sure of the answer to that.

24                   MR. CORBI: Well, the Merrillac case I cite is post-  
25 confirmation, and Court approval was required by the Court.

1                   THE COURT: Was required by the Court, but not by the  
2 plan, is that what you're saying?

3                   MR. CORBI: I have to double check the plan.

4                   THE COURT: Okay.

5                   All right, Mr. Sandler?

6                   MR. SANDLER: Well, first off, the plan is clear  
7 here. If you look at Article 4, I guess you say Section F,  
8 Subsection (4) and you look at the -- there are only two  
9 paragraphs in that section -- but you look at the last sentence  
10 of the first paragraph and you look at the second paragraph  
11 which is a small paragraph, it's clear we don't need -- plan  
12 administrator doesn't need Court approval. That's number one.

13                  THE COURT: But you're asking for it though?

14                  MR. SANDLER: We are asking for it, we are, just  
15 because of the size of the transaction, but we don't need it.

16                  Secondly, that paragraph also says the plan  
17 administrator can dispose of collateral and basically without  
18 Court approval and he can settle any claims without Court  
19 approval. He needs oversight committee approval which he has.

20                  In terms of -- there are a couple of cases, RCP  
21 (phonetic) which is 212 Bankr. Lexis 5390 (E.D.Pa.) and In re  
22 Golf, 322 B.R. 874 (Bankr. D. Nebraska) both address the issue  
23 that 363 doesn't apply post-confirmation. We have a  
24 confirmation order here.

25                  The other point that I would raise now is I'm not

1 even sure what standing that Mr. Corbi's client even has in  
2 this case. To my knowledge, Mr. Corbi's client is not a  
3 creditor in the case, nor has any other interest in the case  
4 other than just submitting a non-binding IOI saying that, you  
5 now, they want to come in and purchase assets that are not for  
6 sale, number one. As I said, this was a release of collateral  
7 that the plan administrator and Sixth Street, the secured  
8 lender, have decided is the best path to maximize value.

9                   Additionally, there is significant concern to the  
10 estate because on April 15th which I believe is Monday, Your  
11 Honor, that Safety National is going to draw down on a \$44  
12 million letter of credit which would be absolutely a disaster  
13 to us.

14                   THE COURT: One second, if I may interrupt for a  
15 second.

16                   MR. SANDLER: Sure.

17                   THE COURT: The exhibit to the letter of intent or  
18 indication of intent from December says a net cash to the  
19 estate is 32,585,000 and what is the net cash to the estate in  
20 --

21                   MR. SANDLER: This is roughly \$39 million, Your  
22 Honor.

23                   THE COURT: Thirty-nine, okay.

24                   MR. SANDLER: Your Honor, for all the reasons that  
25 we've said in the motion, legal reasons that I've mentioned

1 because of the plan, there's no question because of the fact  
2 that we have the secured lender whose money this ultimately is  
3 on board with this. We have, you know, at best a party that  
4 has no standing and is a jilted bidder with a non-binding IOI  
5 seeking to come in and disrupt a process that has been  
6 negotiated between Safety National and the estate over months  
7 would be absolutely insane, Your Honor.

8 THE COURT: Okay, Mr. Corbi, do you want to respond?

9 MR. CORBI: Your Honor, just to -- sure. Just to the  
10 issue of standing in Paragraphs 26 to 28 of the objection we do  
11 have standing because in In re Family Christian, LLC, 533 B.R.  
12 600, 620-621 (Bankr. W.D. Mich), a bidder would have standing  
13 to object to irregularity of how the process was conducted.

14 And we're not a jilted bidder coming in at the last  
15 minute. My client was here before the committee was here, and  
16 May 4th we jumped in and submitted an IOI to Kirkland & Ellis  
17 and Lazard, and we have been in this process from the beginning  
18 of the case. We filed multiple NDAs. And when the plan was --  
19 the plan administrator of the estate, CAC to market the  
20 assets of the insurance portfolio, we entered into another NDA.  
21 We submitted an IOI in October and we submitted an IOI on  
22 December 11th pursuant to the bid deadline set by the plan  
23 administrator's advisors. We're not disrupting any process.

24 In other words, with regards to the April 15  
25 deadline, the debtors had argued four months ago. They could

1 have reached out to us and discussed with us but, again, the  
2 April 15 deadline is their failure to plan and that doesn't  
3 constitute an emergency. And, again, we'd also ask to have a  
4 sale process in this.

5 THE COURT: I'm being told it's a disaster. It's not  
6 an emergency but a disaster, a \$44 million draw on a letter of  
7 credit.

8 MR. CORBI: Well, if the plan administrator wants to  
9 meet with my client over the next couple of days, we can  
10 resolve our issue or show that we have a better bid, then we  
11 would walk away if we don't.

12 THE COURT: All right.

13 MR. SANDLER: Your Honor, Mr. Corbi's client, as you  
14 just heard, and I wasn't aware of this, he's been dealing all  
15 the way back to when the debtors were in possession, going back  
16 to Kirkland & Ellis. People have known about his client out  
17 there. Sixth Street has known about it. Safety National has  
18 known about it. Kirkland & Ellis knew about it. Nobody was  
19 interested.

20 And now a deal is on the table that is going to  
21 maximize value to the estate and if it doesn't happen by  
22 Monday, it is absolutely a horrific result for the estate,  
23 especially an estate where I said there are 19,000 claims  
24 pending. The secured creditor is still owed roughly \$380  
25 million. There's only \$7.2 million to pay \$64 million of admin

1 claims right now.

2 THE COURT: And the stipulation that you want me to  
3 order is just approving the stipulation, as I read it.

4 MR. SANDLER: Yeah, just approving the settlement,  
5 just blessing it.

6 THE COURT: Where is the settlement approval  
7 language?

8 MR. SANDLER: The stipulation consent order says the  
9 relief set forth on the following pages numbered 2 through 19  
10 is order.

11 THE COURT: Yes, and I'm saying where is the -- it  
12 says Court approval at following the execution of stipulation  
13 by all parties, plan administrator will seek Court approval.  
14 That's the stipulation. And where's the order? I just have to  
15 get my hands on the order.

16 MR. SANDLER: Just the front page of it, Your Honor,  
17 there's a signature line where it says stipulation and consent  
18 order. There should be -- at least on my copy there's a  
19 signature line.

20 THE COURT: That's what I'm saying. There's no  
21 separate order approving the stipulation.

22 MR. SANDLER: Would you like us to submit a separate  
23 order?

24 THE COURT: No.

25 MR. SANDLER: Okay.

1                   THE COURT: I don't need a separate order. I'm just  
2 trying to find out exactly what the relief is that is being  
3 granted just here, is supposed to be granted.

4                   MR. SANDLER: It's just approving the settlement of  
5 the proofs of claim and the release of collateral in exchange  
6 for that.

7                   THE COURT: Right. It's not approving it pursuant to  
8 9019 --

9                   MR. SANDLER: No.

10                  THE COURT: -- or 363.

11                  MR. SANDLER: Correct.

12                  THE COURT: I didn't see that. All right.

13                  Okay, this matter is before the Court on shortened  
14 notice for approval of a settlement of two proofs of claim  
15 filed by Safety National Casualty Insurance Corporation on  
16 liquidated amounts. The basis for the shortened notice was  
17 that if the settlement was not approved before the 15th of  
18 April which is Monday of next week, there would be a draw down  
19 on a \$44 million letter of credit that would have significant  
20 negative impact on the estate and its creditors, described as a  
21 disaster by the plan administrator's counsel but as a non-  
22 emergency by counsel for the objector.

23                  And there was an objection filed this morning which  
24 was in accordance with the order and I have reviewed -- I can't  
25 say I've reviewed all the exhibits which are hundreds of pages,

1 but I have reviewed the objection itself and the December  
2 letter of intent or indication of intent I should say.

3                   And then by way of further background, Safety  
4 National provided worker's comp, general liability and auto  
5 insurance to the debtor in several states. The policies are  
6 loss sensitive, meaning that Bed Bath & Beyond was required to  
7 pay certain self-funded retentions under the policy -- under  
8 the policies, there's more than one policy. And Safety was  
9 secured by two letters of credit issued by JPMorgan Chase in  
10 the amount of \$44 million plus \$15 million on another form of  
11 collateral, a fund it was described as.

12                   To date Safety has not drawn on any letter of credit  
13 or collateral but as indicated, it will on April 15th unless  
14 this settlement is approved. The settlement provides that  
15 Safety will draw down on \$38.9 million on the letter of credit  
16 and after that, will fund losses with no further obligation on  
17 the part of the debtors. And there's also a commutation  
18 addendum which deals with I guess kind of a true up as this all  
19 proceeds.

20                   The debtors assert that while Court approval is not  
21 -- not the debtors. The plan administrator asserts that while  
22 Court approval is not required under the plan and cited Article  
23 4, Section 4, Subsection 4, that because of the amount of money  
24 involved, they are seeking in essence the order of the Court as  
25 a comfort that the approval is proper -- that the settlement is

1 proper and also that the litigation to address these issues  
2 would be very costly and complex and take a significant amount  
3 of time.

4 And then if the coverage is denied, it will diminish  
5 the estate. And then the \$39 million, according to the debtor,  
6 will be -- the plan administrator will be released to the  
7 estate. That this settlement has been approved not only by the  
8 plan administrator but by the oversight committee and by Sixth  
9 Street which holds a lien on it.

10 So, the objection, as I stated, is basically based on  
11 this being disguised a 363 sale and that a 363 sale process  
12 should be required here in order to maximize the benefit to the  
13 estate and allow -- I'm sorry, I have to get the exact name --  
14 Taussig Risk Capital Advisors who submitted letters --  
15 indications of intent and has been involved in discussions with  
16 the debtor's counsel and then after that, plan administrator  
17 and submitted various indications of interest but received no  
18 affirmative response from the debtor or the plan administrator  
19 so that this should be -- the Court should order that an  
20 auction be conducted citing various cases including one that  
21 deals with a post-confirmation transaction.

22 But here, we're dealing with a post-confirmation  
23 transaction and a plan that, and there's no dispute as to this,  
24 that provides that the plan administrator is authorized to  
25 settle claims and proofs of claims such as this one or these

1 two in his discretion and in certain circumstances, with the  
2 approval of the oversight committee and then also as  
3 represented today and in the motion, the approval of the Sixth  
4 Street lenders who have a lien on this asset. And it's been  
5 represented in the motion that all those parties approve and  
6 represented today that all those parties were aware of the  
7 interest of Taussig Risk Capital Advisors and determined to  
8 proceed with this settlement.

9 And there's also an objection. In response, the plan  
10 administrator says this is not a 363 sale, it's a settlement of  
11 a claim and 363 compliance is not required and also that  
12 Taussig has no standing because it's just at most an  
13 unsuccessful bidder.

14 Addressing the standing issue first as it's set forth  
15 in the objection, Courts in this circuit have held that an  
16 unsuccessful bidder does not have standing to object to a  
17 proposed sale which this is not, but does not have standing in  
18 any event. But the argument is that Taussig is a party-in-  
19 interest and has standing as a party-in-interest under 1019 or  
20 the case law that it cited.

21 You know, I can say that I never honestly understood  
22 the Third Circuit law that says an unsuccessful bidder doesn't  
23 have standing to object to a sale, but that's what they say,  
24 and I'm bound by the Third Circuit. But I'm not even sure we  
25 get there with this and that it's necessary to get there

1 because it's not even an unsuccessful -- it's not a sale  
2 process although there was one that was perhaps contemplated if  
3 it would yield better results. That did not happen.

4                   But even if I assume that Taussig does have standing,  
5 I would overrule the objection and enter the stipulation and  
6 consent order as a sound exercise of the business judgment of  
7 the plan administrator. I'm not really even being asked to --  
8 there's nothing that says that this is under 363 or even, you  
9 know, it's just really a settlement of the proofs of claim on  
10 which the plan administrator is seeking what it calls a comfort  
11 order.

12                  And to the extent I am required or able to approve  
13 the settlement, first of all, it's in discussion of the  
14 Bankruptcy Court and that's the Martin case, 91 F.3d 389, 396  
15 and the Court must determine whether the settlement is fair and  
16 equitable and in the best interest of the estate, TCI 2  
17 Holdings, 428 B.R. 117, 136 (Bankr. D.N.J. 2010). The Court  
18 must assess and balance the value of the claim that is being  
19 compromised against the value to the estate of the acceptance  
20 of the compromised proposal; Martin at 393.

21                  The Court is not required to conduct a mini trial on  
22 the merits or take evidence which should canvas the issues and  
23 see whether the settlement falls below the lowest point in the  
24 range of reasonableness; Cosoff v. Rodman, In re W.T. Grant  
25 Co., 699 F.2d 599, 608 (2d Cir. 1983).

1                   The factors the Court considers under Martin are the  
2 probability of success in litigation, likely difficulties in  
3 collection, complexity of litigation involved and the expense,  
4 inconvenience, delay necessary in attending it and the  
5 paramount interest of creditors. In considering those factors,  
6 while the plan administrator believes he may be successful in  
7 litigation, that's always in doubt. There's never 100 percent  
8 certainty of probability of success. And in most cases  
9 settlement is much better for everyone involved and for reasons  
10 that will follow. And I find this is one of them.

11                   The likely difficulties in collection, there's not  
12 going to be any difficulty in collection against Safety  
13 National that I think -- there's no evidence that it's anything  
14 other than a very solvent insurance company.

15                   The complexity of litigation involved, the expense,  
16 inconvenience, delay necessary in attending it, the complexity,  
17 you know, even just reviewing the motion and the exhibits  
18 attached in the compendium, the back and forth of claims and  
19 retentions and self-insurance and deductibles and all that, it  
20 would be unquestionably a complex litigation that would be  
21 expensive and would result in delays and in this case, if not  
22 approved, would result in a draw down of the letter of credit  
23 of \$44 million which I am being told would be disastrous for  
24 the estate.

25                   And the paramount interest of creditors, the plan

1 administrator whose obligation is to maximize the estate for  
2 the benefit of creditors is on board. The oversight committee  
3 which oversees the plan administrator and making sure that he  
4 maximizes that value is on board. The secured creditor who's  
5 out \$300 million and or just shy of \$300 million and whose  
6 collateral this would be is on board. And it's represented  
7 that all those parties, and it's not said otherwise, have known  
8 of Taussig's involvement and potential interest all along and  
9 they decided to go forward with it.

10           And then the one thing that I have here is the  
11 December letter indicates, of Taussig, indicates a \$35 million  
12 benefit to the estate and I'm being told that this is 39  
13 million. So, even on that basis it's an unassailable exercise  
14 of the trustee's business judgment to enter into this  
15 settlement agreement in these circumstances. So, even if there  
16 is standing, I would approve this settlement as in the best  
17 interest of the estate as determined by the people who have the  
18 obligation to execute transactions in a matter that is in the  
19 best interest of the estate.

20           So, I'm going to enter the consent order and  
21 stipulation for the reasons set forth here and also in the  
22 motion and during the course of argument.

23           MR. SANDLER: Your Honor, thank you very much. And  
24 with that, I believe we have concluded the agenda for today.

25           THE COURT: I believe that's correct. Okay.

1 MR. SANDLER: Thank you, Your Honor.

2 THE COURT: I have nothing further on this matter. I  
3 do have another matter after this so I'll deal with that.  
4 Thank you.

5 So, you know, I know you're not happy with the  
6 result, Mr. Corbi, but that's my ruling, okay?

7 MR. CORBI: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. SANDLER: Thank you, Your Honor.

10 THE COURT: Have a good day.

11 MR. SANDLER: Have a good day.

12 THE COURT: Thank you.

13 \* \* \* \* \*

14 **C E R T I F I C A T I O N**

15 I, MARY POLITO, court approved transcriber, certify  
16 that the foregoing is a correct transcript from the official  
17 electronic sound recording of the proceedings in the above-  
18 entitled matter, and to the best of my ability.

19

20 /s/ Mary Polito

21 MARY POLITO

22 J&J COURT TRANSCRIBERS, INC.

DATE: April 16, 2024

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